

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

CC 94-54  
RM-8012

In the Matter of:

Equal Access and Interconnection  
Obligations Pertaining to  
Commercial Mobile Radio Services

CC Docket No. 94-54  
RM-8012

**REPLY OF ALLNET COMMUNICATION SERVICES, INC.**

Allnet Communication Services, Inc., hereby replies to the comments filed in the above captioned proceeding, in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry (NPRM), released July 1, 1994. These reply comments will focus on the issue of requiring equal access for all Commercial Mobile Radio Services (CMRS). The comments were generally in favor of requiring such equal access.<sup>1</sup> As will be demonstrated below, the limited opposition predictably came from those whose actual or potential market power will be diminished if such equal access were required. The end user will clearly be the beneficiary of having a choice of long distance carriers, as well as cellular carriers via resale. The costs of providing equal access are relatively small. For example, Telephone and Data Systems (TDS) estimates that the costs are less than 1.5% of their construction budget through 1995. For this small price, TDS end users, who are currently forced to use AT&T, would have a choice among less expensive long distance carriers.

The Commission would clearly be amiss if it were to allow non-wireline facilities

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<sup>1</sup>Among the parties who supported the requirements for equal access were: the General Services Administration, the California Public Utilities Commission, the New York Department of Public Service, NARUC, Ameritech, Bell Atlantic Mobile, BellSouth, NYNEX, Pacific Bell, Puerto Rico Telephone Company, Rochester Telephone, Allnet, AT&T, LDDS, McCaw, TRW, Wiltel.

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cellular and PCS type services to monopolize the long distance services that are offered their customers. Thus, Allnet supports customer choice. Allnet continues to strongly support the adoption of an general equal access requirement for CMRS services, generally, without further delay.<sup>2</sup>

**I. The Commission Should Order Equal Access Without Delay**

The wireless voice industry, in particular cellular services, has been characterized by discriminatory pricing that could only exist in the presence of significant market power. Typically, cellular carriers have competed on non-service items, such as pricing cellular telephones below cost as tie-ins to exorbitant airtime and toll charges for a minimum use commitment lasting several months. The source of this market power is primarily two fold: 1) the high barriers for end users to change their carriers (where they exist), and 2) the lack of alternative carriers. The latter problem may one day be solved if the Commission succeeds in getting (and the market can support) multiple independent facilities-based wireless carriers in each of the markets -- each with a large enough marketshare for competition to have an effective restraint on all rates and practices of the cellular providers. However, that prospect is highly speculative at this time. In fact, at this time it appears the Bell Operating Companies will likely dominate the bidding for the PCS spectrum, primarily driven by a desire to keep out new wireless competitors.

The second condition, namely high barrier to changing carriers, will continue to plague the industry for the foreseeable future. Today, the telephone numbers of wireless customers are not "portable." This means that in order to change carriers,

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<sup>2</sup>As explained in the Allnet Comments, there may be some CMRS services that do not call for equal access -- that is, those that have no implicit or explicit long distance transport element -- e.g., paging services or conventional "broadcast" (i.e., one to many) CMRS services.

an end user must change their telephone number. This is a very inconvenient, time consuming, and costly process. It requires that the customer inform all of its actual and potential callers of its new telephone number. As anyone knows who has changed their local telephone number, it is an unenviable task to have one's number changed. For a business, it can be very costly -- including lost sales. The second source of costs associated with changing a telephone number in order to change a carrier arises from the need to reprogram the telephone number that is programmed into the portable telephone. This is a large nuisance to customers simply for changing their carriers. These barriers allow monopoly pricing by the end user's carrier, and price discrimination that is prevalent among the cellular and CMRS industry, in general, today. As explained below, with the aid of Southwestern Bell's consultant John Housman, the cellular industry is engaging in extensive price discrimination that, according to Mr. Housman, arises from their market power.

By denying their customers equal access, a CMRS facilities based carrier can gain additional net monopoly profits from its end users. These excess profits can be built into the toll rates. To the extent that these monopoly rents derive from the bottleneck control of the end user's telephone number, this additional avenue for collecting these rents allows the CMRS provider to understate the true costs of using their services by publishing only the monthly and "airtime" charges when promoting their services. If end users had a choice of various long distance carriers, without having to change their carriers, these additional monopoly profits from end users would be denied these CMRS carriers. There can be no dispute that the promotion of customer choice among alternative carriers is the most potent and easiest implementable weapon that this Commission has in its fight to eradicate monopoly

power and promote competition in any market.

The opposition comments filed in this proceeding are both weak, contradictory and self-serving. The claims of "substantial costs" are clearly contrived. For example, an analysis of the data provided by Telephone and Data Systems (TDS) shows that the costs of providing equal access would be less than 1.5% of its new construction budget.<sup>3</sup> These small costs would allow cellular customers to use interLATA services of other interexchange carriers, other than AT&T -- the carrier who currently receives all of the interLATA traffic from the TDS cellular systems. Less than 1.5% of the total new construction budget is a very small price to pay for allowing end users to choose their interLATA carrier. Furthermore, by allowing end users to choose more than one interexchange carrier, the resale opportunities of these facilities based carriers is also enhanced -- allowing end users to have a choice of more cellular resale carriers, as well.

TDS proposes that the proper test for determining market power is whether the long distance rates are "substantially higher" where equal access is not provided. However, TDS's systems already fail this test because it has conceded that its end users are forced to pay AT&T rates, which are typically the highest dial-1 rates in the industry. In contrast, where equal access is provided, Allnet provides some of its most competitive interLATA rates to cellular customers, with rates as low as 18 cents per minute for calling anywhere in the country -- which are far below many of

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<sup>3</sup>In the last six months of 1994 and 1995, TDS estimates that it will spend approximately \$260 million on new construction and system upgrades for its cellular system. TDS at 2. The total costs of installing equal access is projected by TDS to be only \$3.78 million, i.e., less than 1.5% of that new construction budget. TDS at 5. Companies, such as NEXTEL and Comcast, speak of "millions" in costs but provide no specific numbers or studies to support their claims. e.g., NEXTEL at 10-12, and Comcast at 24-28. Thus, these empty claims can have no weight in these deliberations.

the rates charged by AT&T to those same customers for the same calls.<sup>4</sup> Thus, any cellular system, such as that of TDS, fails its own test.

There can be no doubt that excess profits are being made by cellular providers on "resale" of interLATA services. TDS concedes that it is able to achieve supranormal contributions to its net profits through the marking up of interLATA rates its resells to its customers.<sup>5</sup> TDS further concedes that these excess profits are used to subsidize its basic cellular service.<sup>6</sup> Thus, not only is this monopoly behavior resulting in excess uneconomic toll rates, it is also resulting in below costs basic cellular rates. This uneconomic outcome results in an overconsumption of basic cellular service and an underconsumption of toll -- leading to the classic misallocation of resources caused by irrational pricing.

The competitiveness of Allnet's rates for interLATA calls made from equal access cellular phones also disproves Mr. Housman's erroneous claim that "IXC's have charged anti-competitive prices to EACP customers." See, Housman Affidavit at 7, attached to Southwestern Bell Comments. Mr. Housman needs to study the long industry more closely before making such baseless remarks in affidavits to the Commission. As to AT&T's rates, Mr. Housman's own data shows, AT&T is charging below the maximum price caps allowed for its services. See, Housman Affidavit at

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<sup>4</sup>See, Allnet Tariff FCC No. 6 at Section 5 ("Allnet Mobile Line Service") and at Section 3.17 ("Solution II").

<sup>5</sup>TDS at 13.

<sup>6</sup>TDS at 13 ["the FCC should not forget that one of the revenue sources which make large cellular local calling areas possible is precisely the margin on toll revenue which cellular carriers receive from paying discount rates to IXCs [and then charging "full retail rate[s] per call.""]

9.7 Thus, the competitive forces of the marketplace are keeping AT&T's rates below their maximum possible levels.

Moreover, the rates Allnet charges for interLATA calls originating from cellular telephones are the same deeply discounted rates charged to Allnet's best dial-1 customers -- even though the costs of providing interLATA services to cellular systems tend to be higher.<sup>8</sup>

Significant overcharges are currently being assessed by cellular carriers through "air-time charges" which often range as high as 50 cents or more per minute.

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<sup>7</sup>Similarly, disingenuous is Mr. Housman's claim that the increased use of fibre should have resulted in "annual cost reductions on the order of 13 percent." Houseman at 10. Given that AT&T entire transmission expenses make up less than 7 percent of the total revenues collected by AT&T, the statistic cited by Mr. Housman (assuming it is correct) could only be referring to a reduction in that 7% of the revenues (as opposed to the total revenues) or less than 1%. This can be hardly described an "opportunity for substantial, sustainable productivity gains." *Id.* at 10. Such misleading statistical claims are irresponsible and should not be tolerated by this Commission.

<sup>8</sup>As explained in the Affidavit of Greg Jones, found attached to Allnet's comments, Allnet must pay access charges to both the cellular provider and the landline local exchange carrier when originating the calls because Allnet has been generally refused cost-effective direct interconnection to the cellular systems. This fact contradicts Mr. Housman's theoretical construct regarding how interLATA services are provided from cellular carriers. See, Housman Affidavit at 12-13. Similarly, nonsensical is Mr. Houseman's claim that cellular providers could purchase long distance services for only 4 to 8 cents per minute. Mr. Housman cites no support for this claim nor a tariff offering of any IXC that would offer such rates. Nor does Mr. Housman cite one integrated cellular carrier who provides nationwide toll rates (including air time and where equal access is not available) where such rates are substantially below the rates that are currently charged by IXCs where equal access is provided and air time is based on marginal costs. At best, Mr. Housman's claim supports allowing a cellular provider to resell interLATA services, on an arms-length separate subsidiary basis, under the conditions that were recommended for imposition by the Justice Department for the BOCs. Similarly, deceptive are Mr. Housman's "before" and "after" statistics regarding the expansion of calling areas. First, the analysis is meaningless because the price changes cited (which are typically calculated over a period of 1 to as many as 3 years) are not necessarily caused by the expansion of the calling area. Second, in many cases the prices actually went up. See, Housman at Tables 1 and 2. Thus, contradicting Mr. Housman's claims with regard to calling area sizes.

These monopoly rates, that are far in excess of the marginal cost of providing air time on a cellular system, demonstrate the monopoly problem in cellular services -- namely the monopoly power of the facilities providers themselves. According to Mr. Housman's economic principles, cellular carriers, such as Southwestern Bell, are exercising monopoly power through this, what Mr. Housman calls, price discrimination.<sup>9</sup>

## **II. PCS Promises Do Not Alter the Need for Equal Access**

A number of opponents also seek to rest their opposition on the promises of PCS. For example, TDS states that there are "projections that there will be five to six competitive providers of wireless voice grade service in metropolitan areas." TDS at 10. TDS then argues that it is "certainly sensible to wait a few years at least for the competitive impact of these new services to be felt before embarking on a costly regulatory program which might have been relevant, if at all, to the cellular duopoly structure of the late eighties and early nineties and not the marketplace realities of tomorrow." (emphasis added) TDS at 10-11. Of note, TDS concedes that a duopoly exists and will continue to exist for a few years.<sup>10</sup> Furthermore, its predictions as to

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<sup>9</sup>See, for example, the Dobson "Perfect Plan" attached to the Southwestern Bell Comments. That plan charges 50 cents per minute even for calls to another cellular telephone across the street. This is clearly outrageously in excess of the marginal costs of establishing an airtime connection. By Southwestern Bell's consultant's reasoning, these charges -- which do not reflect the lower cost of cellular to cellular calls, or cellular to landline local calls, is discriminatory. See, Housman Affidavit at 12. According to Mr. Housman, if a carrier charges customer "the same price for [a call to a cellular phone as opposed to one which originates or terminates on a landline system], despite a significantly lower costs of the cellular calls," then that carrier is "currently engaged in price discrimination." *Id.* at 12.

<sup>10</sup>Some parties, such as Comcast, do not even concede this obvious fact. See, Comcast at 23. These parties, who clearly have been granted the exclusive privilege of using scarce resources and who have monopoly control of the numbers on their systems, appear to make the incredible claim that these exclusive rights do not grant them any market power. This is clearly incorrect. Comcast, for example, confuses

what might happen a "few years" from now is highly speculative. There is no way of accurately predicting whether the future market structure of the cellular industry. That outcome is highly intertwined with many other industry dynamics making such isolationist predictions meaningless.

The Commission must deal with the facts. There is significant market power in the cellular industry. This market power has led incumbent cellular providers to keep interLATA competition from developing for their customers. Finally, no prediction can be made with any meaningful certainty regarding where this industry might be after the next few years. It is highly likely that if, and when, the new PCS providers are closer to committing to providing services, the incumbent cellular providers will likely threaten to drop their price umbrella to a level that is low enough that the PCS provider will find it more profitable (or better yet, less unprofitable) to abandon their licenses rather than continue to sink funds into a business that the incumbent cellular provider has come to dominate long after the majority of its initial sunk costs were recovered. Apparently, BellSouth believes that the potential of many of these firms is very questionable.<sup>11</sup>

### **III. Equal Access Will Stimulate Calling Volumes**

Companies such as TDS challenge the NPRM's observation that equal access will generate additional calling volumes for cellular systems.<sup>12</sup> TDS claims that the

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the problem of "dominating the cellular marketplace," with dominating or otherwise possessing market power over a customer's services. The former is not a necessary pre-requisite for the latter (e.g., a duopoly would satisfy the latter, but not necessarily the former).

<sup>11</sup>See, Ex Parte, BellSouth filed September 14, 1994

<sup>12</sup>TDS at 14.



monopoly provision of interLATA services would not deter calls. TDS misses the point. In areas where equal access is provided, Allnet promotes the use of cellular services by promoting its cellular interLATA service. By making the availability of this interLATA cellular calling option known to Allnet's embedded base of customers and to prospective customers, Allnet is promoting the awareness of cellular services and their availability with calling options that customers might not otherwise have been aware of. Thus, Allnet, in effect, become an unpaid promoter and marketer of the cellular service where it can obtain equal access.<sup>13</sup>

Additional usage also comes about through the lower interLATA charges that cellular customers can realize by presubscribing to Allnet. TDS apparently believes that demand for interLATA services is inelastic, and thus lower prices -- by its view -- does not stimulate higher demand. This is counter-intuitive and factually incorrect. Allnet's experience has been that demand for interLATA services is highly elastic and the demand for Allnet's services is directly a function of the price/quality/features it provides vis a vis the market clearing price for similar services.

#### **IV. The Equal Access Requirement Should Not Be Undermined**

Some parties, such as TDS, argue that in some rural areas only "Type 1" interconnection is available, and thus 10XXX dialing should be sufficient for providing equal access.<sup>14</sup> This argument is nonsensical. If TDS, or any other provider, can

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<sup>13</sup>On a related note, Comcast's argument that equal access will only "strengthen" the larger IXC's is easily disproved by Allnet's success in this area and the fact that the IXC's that cellular carriers typically resell today are the larger IXC's. By requiring equal access, smaller IXC's will have a fair crack at carrying some of the interLATA traffic originating from cellular carriers -- as compared to where no equal access is provided.

<sup>14</sup>TDS at 17.

provide 10XXX dialing capability, then that cellular carrier can provide dial-1 equal access. Dial-1 equal access is nothing more than a pre-specification of which 10XXX code will be dialed by the switch before the switch outpulses the call. Thus, if 10XXX can be offered, then so can dial-1 equal access.

Equal access costs should be paid by all toll carriers who provide toll services from the cellular provider's system. Balloting is not required, nor is allocation.

#### **V. Resale Obligations Should Be Imposed**

Some facilities providers not only oppose equal access requirements, they also opposed resale of their services.<sup>15</sup> The benefits of resale in combating discrimination among users is well established. The opposition to resale is based on a contrived argument that CMRS competitors would "avoid significant investment by simply using the systems built by other parties."<sup>17</sup> They go on to argue that this would shift risk to existing firms and this would be "inequitable."

These arguments are plainly nonsensical. Assuming for the sake of argument that it is more profitable for a new entrant to resell rather than invest. This is not necessarily an uneconomic outcome or contrary to the public interest. Such an outcome simply states that the market cannot profitably support additional capacity. The resources of society would be better off spent building something else, or more effectively marketing and selling existing capacity before unneeded capacity is installed. On the other hand, if more capacity is required, then even with no resale restriction, the competitor will build facilities. These outcomes assure that the risk is

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<sup>15</sup>See, e.g., NEXTEL at 19.

<sup>17</sup>NEXTEL at 20.

balanced against the reward. It is simply untrue that allowing risk somehow shifts to the party who builds rather than resells. In fact, the opposite is quite true . By allowing resale the risk of the party who has already built the capacity will be lower because 1) it is more likely that it will not be participating in a market which suffers from artificial over-capacity due to irrational resale restrictions on facilities based carriers, and 2) will have a larger potential revenue stream which includes the revenues of the reseller.

Similarly nonsensical is Comcast's argument that "analysis of the cellular switch-based resale business should convince the Commission that there is no economic basis" for such resale.<sup>18</sup> Comcast provides no data and no analysis. In fact, there are hundreds of cellular resellers throughout the US. Thus, there is nothing to convince the Commission that resale should not be required.

In sum, resale restrictions should, without question, be prohibited.

Respectfully submitted,  
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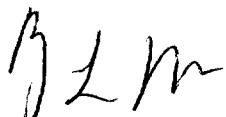
Dated: October 12, 1994

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<sup>18</sup>Comcast at 18.

# Certificate of Service

I, Roy L. Morris, hereby certify that I have caused to be served on this date, a true copy of the forgoing Allnet brief by postage-prepaid first class mail to the parties on the attached service list.



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